

Message Text

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TO SECSTATE WASHDC 7933

C O N F I D E N T I A L SANTIAGO 1508

E.O. 11652: GDS

TAGS: CI, PINS

SUBJ: SUPREME COURT REITERATES STATE OF SIEGE VIEWS

REF: SANTIAGO 1505

1. SUMMARY: FIRST BREACH IN UNIFIED WALL OF JUDICIAL SUPPORT OF JUNTA'S STATE OF SIEGE LEGAL MEASURES QUICKLY PLUGGED BY SUPREME COURT BY ITS REVERSAL OF SHARPLY PHRASED SANTIAGO COURT OF APPEALS DECISION GRANTING WRIT OF HABEAS CORPUS TO 15-YEAR OLD DETAINED BOY. PRISONERS' LEGAL RIGHTS AND JURISDICTION OF WARTIME MILITARY COURTS MARTIAL ARE TWO MAJOR ISSUES ON WHICH JUNTA BEING CRITICIZED BY FOREIGN LEGAL MINDS AND SOME LOCAL LAWYERS. HOWEVER, SUPREME COURT, CHILEAN BAR ASSOCIATION AND MAJORITY OF LAWYERS SUPPORT JUNTA'S POSITIONS OUT OF COMMON BELIEF THAT STRONG HAND NECESSARY TO "CLEAN UP" COUNTRY. END SUMMARY.

2. ACCORDING MARCH 23 LA TERCERA STORY, SANTIAGO COURT OF APPEALS GRANTED REQUEST FOR WRIT OF HABEAS CORPUS (RECURSO DE AMPARO) FOR 15-YEAR OLD LUIS MUNOZ MESA, WHO HAS BEEN IN GOC CUSTODY SINCE DEC 19 UNDER STATE OF SIEGE ARREST DECREE. IN STRONGLY WORDED DECISION, CONSTITUING FIRST PUBLISHED CRITICISM OF JUNTA'S HANDLING OF STATE OF SIEGE AUTHORITY EMANATING FROM WITHIN JUDICIAL SYSTEM, COURT ARGUED THAT EXECUTIVE'S CONSTITUTIONAL AUTHORITY TO DETAIN AND MOVE
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INDIVIDUALS WITHIN COUNTRY DURING STATE OF SIEGE HAS "AS ITS LIMITS THAT POINT WHERE THE POWER IS MISDIRECTED TOWARD ARBITRARY

MEASURES."

3. RIGHT OF HABEAS CORPUS, DECISION DECLARED, IS PROTECTED BY JUNTA'S OWN STATEMENTS GUARANTEEING INDEPENDENCE TO JUDICIAL SYSTEM, AS WELL AS BY INTERNATIONAL TREATIES SUCH AS THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WHICH OBLIGE GOC TO "MAINTAIN COURTS WITH COMPETENCE TO PROTECT ALL PERSONS ARBITRAILY DEPRIVED OF THE FUNDAMENTAL RIGHT OF LIBERTY." DECISION ALSO REFERRED TO CHILEAN LEGISLATION REGARDING PROTECTION OF MINORS, ARGUING THAT GOVT DISOBEYING IT BY DETAINING MUNOZ IN ESTADIO CHILE.

4. MINISTRY OF INTERIOR APPEALED COURT'S DECISION TO SUPREME COURT, ARGUING THAT MUNOZ, DESPITE HIS YOUTH, IS TRAINED EXTREMIST AND MEMBER OF COMMUNIST PARTY. ACCORDING TO TERCERA STORY, SUPREME COURT REVERSED LOWER COURT DECISION, REAFFIRMING ITS POSITION HELD SINCE COUP THAT JUDICIAL SYSTEM LACKS AUTHORITY TO INTERVENE IN CASES OF ARRESTS UNDER TERMS OF STATE OF SIEGE. SUPREME COURT ALSO ARGUED THAT LAW PROTECTING DETAINED MINORS CANNOT TAKE PRECEDENCE OVER DISPOSITIONS ADOPTED BY THE GOVT DURING STATE OF SIEGE, NOR IS IT WITHIN COURT'S COMPETENCE TO WEIGH GOVT'S MOTIVES FOR ARREST.

5. COURT'S UNWILLINGNESS TO INVOLVE ITSELF IN QUESTION OF PRISONERS' RIGHTS IN TIME OF STATE OF SIEGE HAS PROMPTED SOME CRITICISM AND WILL LIKELY REAP MORE GIVEN GOC'S INTENTION (REFTEL) TO AMPLIFY LIST OF POTENTIAL DETAINEES TO INCLUDE "SOCIAL UNDERSIRABLES." CHILEAN JUDICIAL SYSTEM HAS ALSO RECEIVED CRITICISM INTERNATIONALLY AND LOCALLY FOR ITS ACCEPTANCE OF GOVT'S POSITION CONCERNING JURISDICTION OF MILITARY COURTS. LATTER ISSUED CENTERS ON GOVT DECREE-LAW 13, WHICH HOLDS THAT ALL JUDICIAL PROCESSES IN MILITARY COURTS INITIATED PRIOR TO SEPT 11 WILL BE TRIED IN REGULAR MILITARY TRIBUNALS IN ACCORDANCE WITH PREACETIME PROVISIONS OF CODE OF MILITARY JUSTICE, BUT THAT ALL MILITARY JUDICIAL PROCESSES INITIATED AFTER SEPT 11 WILL BE TRIED UNDER WARTIME PROVISIONS OF CODE AND BY WARTIME COURTS MARTIALS (CONSEJOS DE GUERRA EN TIEMPO DE GUERRA.)

6. MAJOR DIFFERENCE BETWEEN TWO PROCEDURES IS THAT PEACETIME PROVISIONS ALLOW FOR APPEAL AS HIGH AS SUPREME COURT, WHILE WARTIME PROVISIONS
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ALLOW FOR NO APPEAL TO CIVILIAN BODIES. CRITICS HAVE ARGUED THAT TRYING INDIVIDUALS FOR CRIMES COMMITTED PRIOR TO SEPT 11 (I.E. BEFORE THE MILITARY COUP AND DECLARATION OF STATE OF WAR) UNDER THE PROCEDURES OF THE WARTIME CODE OF MILITARY JUSTICE CONSTITUTES VIOLATION OF LEGAL RIGHTS. THEY HAVE HELD THAT INDIVIDUALS SHOULD BE TRIED BY RULES APPLICABLE AT TIME OF ALLEGED CRIME'S COMMISSION, AND NOT BY THOSE WHICH ENTERED INTO FORCE AT TIME OF INITIATION OF JURIDICAL PROCESS. JUDICIAL SYSTEM HAS NOT FORMALLY DEALT WITH ISSUE BUT ITS SILENCE REFLECTIVE OF ITS

BELIEF, AND THAT OF MOST CHILEAN LAWYERS, THAT EFFECT OF CHANGE IN COURT HAVING JURISDICTION (E.G. FROM NORMAL MILITARY TRIBUNAL TO WARTIME COURTS MARTIAL) NOT SIGNIFICANT MATTER, GIVEN GENERALLY RECOGNIZED RIGHT OF MILITARY TO TRY INDIVIDUALS (INCLUDING CIVILIANS) AT ANY TIME FOR CRIMES PROHIBITED BY CODE OF MILITARY JUSTICE OR OTHER LAWS (SUCH AS ARMS CONTROL) WHICH FALL UNDER ARMED FORCE'S JURISDICTION.

7. MOST CRITICISM AIMED AT SUPREME COURT AND AT CHILEAN BAR ASSOCIATION (COLEGIO DE ABOGADOS) FOR ITS NON-CHALLENGE OF JUNTA'S POSITIONS REGARDING DETENTIONS AND TRIALS HAS BEEN VOICED BY INTERNATIONAL GRO
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